

November 17, 2006

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Diane C. Larson

Date of Filing: October 18, 2006

Case Number: TFA-0178

On October 18, 2006, Diane C. Larson filed an appeal from a determination issued to her on September 15, 2006 by the Department of Energy's (DOE) FOIA/Privacy Act Group (FOIA/PA). In that determination, FOIA/PA responded to a request for documents that Ms. Larson submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This appeal, if granted, would require FOIA/PA to perform an additional search and either release any responsive documents or issue a new determination justifying the withholding of those documents.

I. Background

On May 2, 2006, Ms. Larson filed a request with FOIA/PA for the following documents:

- (1) Classified documents provided to the defendant that were not provided to her or her attorney during her litigation.
- (2) All documents DOE provided to the Central Intelligence Agency (CIA). In this item of her request, Ms. Larson specifically refers to an October 6, 2003 letter from FOIA/PA stating that "the CIA identified a responsive document that originated at the DOE Headquarters." Ms. Larson then states, "Please provide me a copy of that responsive document"
- (3) All information and reports from 1992 to date that implied criminal activity generated by the DOE Headquarters or the DOE Richland Operations Office, which may include Ed Curran, John Wagoner, James Dover, Len Marzetti, Lyle Gilk, Dennis Sieraki, James Spracklen, Bob Roselli, Notra Trulock, Ray Semko, or DOE contractors Westinghouse (Ron Rush, Jim Stowe, Mike Duncan, David Palmer, Craig Walton), Boeing, Lockheed Martin, Babcock & Wilcox, and Battelle. Also in this item of her request, Ms. Larson requested "information in my FOIA request 10/13/2000 not previously provided to me that can now be declassified."

- (4) Information that James Spracklen, DOE Richland Operations Office, provided to Clark Trapp and Phil Gasiewicz, U.S. Investigations, in 1989 and 1999 regarding Ms. Larson's finances.
- (5) All information provided by DOE Headquarters and the Richland Operations Office (Mary Jack, Robert Hubbard, Dennis Sieraki) to Dr. Montgomery regarding Ms. Larson's mental health and the reason that she was sent for an evaluation.
- (6) Global Technologies employment records regarding Ms. Larson (1999-2000) that were acquired by DOE.
- (7) Police or Hanford Patrol reports filed on Ms. Larson from false information "being provided to/by Global or anyone else."
- (8) A copy of Ms. Larson's security clearance information as it appears "on the DOE database file" and "a copy of my SCI file."

Letter from Diane Larson to FOIA/PA (April 21, 2006).

FOIA/PA determined that any documents responsive to Ms. Larson's request would be located at either the DOE's Richland Operations Office (DOE/RL) or the Office of Security and Safety Performance Assurance at DOE Headquarters (DOE/SA), and therefore referred the request to these two offices.

DOE/RL conducted a search of its Office of Chief Counsel, Safeguards and Security Office, and the offices of the DOE contractor Fluor Hanford, Inc., which has oversight of the Hanford Patrol. DOE/RL also searched a database that lists archived employment records for any records regarding Ms. Larson's employment with Global Technologies. DOE/RL described the aforementioned locations as those "that would most likely have responsive records." DOE/RL searched these locations using Ms. Larson's name and Social Security Number, and found no documents responsive to her request. Electronic mail from Dorothy Riehle, DOE/RL, to Steven Goering, Office of Hearings and Appeals (November 2, 2006).

DOE/SA conducted a search of

Ms. Larson's Personnel Security File (PSF) and the Central Personnel Clearance Index (CPCI), both of which are part of the DOE-43 "Personnel Security Files", our system of record. Ms. Larson's PSF and CPCI were examined as the information she requested would have been contained in those locations if it existed.

Memorandum from Stephanie Grimes, Director, Office of Personnel Security, to Steven Goering, OHA (October 31, 2006). DOE/SA located documents responsive to items 2, 5, and 8 of Ms. Larson's request.

In its determination letter, FOIA/PA informed Ms. Larson of the results of DOE/SA's search, released the responsive documents to Ms. Larson in their entirety, and explained that she had the right to appeal the adequacy of the search to the Office of Hearings and Appeals. Letter from Abel Lopez, FOIA/PA, to Ms. Larson (September 15, 2006) (Determination Letter).

Ms. Larson then filed the present appeal, in which she states, "Please review information and records to provide me ALL the information and answer the questions for the 11 items that I requested I challenge the adequacy of this search for responsive documents Information has been withheld." Appeal at 1.¹ More specifically, Ms. Larson contends that the DOE should now release information that was withheld from her by the DOE's Office of Inspector General (DOE/IG) in 2003 in response to a previous FOIA request she filed. She also notes that one of the documents released to her, a letter, refers to attachments, but that FOIA/PA did not release to her any attachments. Finally, she states that FOIA/PA should search other DOE locations for responsive documents.

The issue before us is whether, in light of FOIA/PA's search for responsive documents as described above, the search was adequate under the requirements of the FOIA.² In responding to a request for information filed under the FOIA, it is well established that an agency must "conduct a search reasonably calculated to uncover all relevant documents." *Truitt v. United States Department of State*, 897 F.2d 540, 542 (D.C. Cir. 1990). "The standard of reasonableness which we apply to agency search procedures does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the sought materials." *Miller v. United States Department of State*, 779 F.2d 1378, 1384-85 (8th Cir. 1985); accord *Truitt*, 897 F.2d at 542. We have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. See, e.g., *Ms. Doris M. Harthun*, 28 DOE ¶ 80,282 (2003).

II. Analysis

In the present case, we find that FOIA/PA's search was adequate under the requirements of the FOIA. First, based upon the request received, FOIA/PA made a reasonable determination that documents responsive to Ms. Larson's request would most likely be located at DOE/RL or DOE/SA at DOE Headquarters, because her request references DOE/RL, DOE Headquarters, and, more specifically, security clearance information. Similarly, DOE/RL and DOE/SA searched those locations within its purview where documents were most likely to be found.

¹ Three of the 11 items in Ms. Larson's request were questions (e.g., "Why was I put on an indices list and tracked as a non-US citizen?"), rather than requests for documents. However, the FOIA is not a mechanism for answering questions. Under the FOIA, agencies are required only to release non-exempt, responsive documents; they are not required to answer questions about an agency's operations. *DiViao v. Kelley*, 571 F.2d 538, 542-43 (10th Cir. 1978).

² Because the only responsive documents ultimately located by FOIA/PA were contained in a Privacy Act system of records (DOE-43, "Personnel Security Files"), FOIA/PA proceeded to process Ms. Larson's request under the Privacy Act. This treatment of the request minimized the possibility that any information would need to be withheld from the requester, and all of the responsive documents located were released in their entirety. However, Ms. Larson stated in her request that she was filing the request under the FOIA, and FOIA/PA's search, as described above, was not limited to a particular Privacy Act system of records. We therefore will analyze the adequacy of the FOIA/PA's search under the requirements of the FOIA. See *Diane C. Larson*, 27 DOE ¶ 80,110 (1998) (analysis of the adequacy of a Privacy Act search "using principles that we have developed under the FOIA").

Nonetheless, Ms. Larson has identified documents that were not identified or released to her by FOIA/PA in its September 15, 2006 determination. First, Ms. Larson correctly notes that attachments to one of the documents released in FOIA/PA's determination, a letter from Robert Hubbard to Frederick Montgomery, were not provided with the September 15 determination. Second, her request specifically identifies documents from which information was previously withheld as classified in response to a request she submitted in 2000. Third, in her appeal, Ms. Larson identifies two documents from which information was withheld by DOE/IG in October 2003 in response to an earlier request she filed. All of these documents appear to be within the scope of Ms. Larson's May 2, 2006 request.

Regarding the attachments referenced in one of the documents provided to Ms. Larson, we have been informed that the attachments, and in fact the letter itself, have already been released to Ms. Larson in a November 8, 2000 response to a request she previously filed. Electronic mail from Audrey Dixon, Office of Personnel Security, to Steven Goering, OHA (November 14, 2008). The DOE is not required to release to a FOIA requester the same documents previously released to that requester under the FOIA.

However, Ms. Larson is entitled to request again information that previously has been withheld from her, specifically any classified information not released in response to her October 2000 request, and the information withheld by DOE/IG in its October 2003 determination. We will therefore remand this matter to FOIA/PA so that Ms. Larson's request can be referred to the appropriate offices within DOE for a new determination regarding the previously withheld information.

Finally, though we conclude that FOIA/PA's search for documents responsive to Ms. Larson's request was adequate given the information available at the time, FOIA/PA should consider on remand whether there are additional locations where responsive documents may be located. For example, Ms. Larson requested "a copy of my SCI file." DOE/SA has informed us that the "SCI" is an abbreviation of "Sensitive Compartmented Information," and that such information is maintained by a DOE Headquarters element other than DOE/SA. We also suggest that FOIA/PA consider asking Ms. Larson for information in support of her contention that responsive documents may be located at other DOE locations. In all other respects, we will deny the present appeal.

It Is Therefore Ordered That:

- (1) The Appeal filed on October 18, 2006 by Diane C. Larson, OHA Case No. TFA-0178, is hereby granted as set forth in Paragraph (2) below and is denied in all other respects.
- (2) This matter is hereby remanded to the FOIA/Privacy Act Group of the Department of Energy for the issuance of a new determination in accordance with the instructions set forth above.
- (3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district

in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: November 17, 2006